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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WAKE UP, INC., a Washington corporation, Plaintiff, vs. GTBC, LLC, an Idaho limited liability company, d/b/a GRAND TETON BREWING COMPANY, Defendant.	No. COMPLAINT FOR REGISTERED TRADEMARK INFRINGEMENT; COMMON LAW TRADEMARK INFRINGEMENT; COMMON LAW UNFAIR COMPETITION; DECEPTIVE TRADE PRACTICES; AND UNJUST ENRICHMENT **With Demand for Jury Trial**

Plaintiff Wake Up, Inc. ("Wake Up") files this Complaint against Defendant GTBC, LLC d/b/a Grand Teton Brewing Company ("Grand Teton") for injunctive relief and damages, and alleges as follows:

NATURE OF THE ACTION

1. This is an action for damages and injunctive relief to stop Defendant Grand Teton's infringement of Wake Up's federally registered trademark, and to

prevent further harm to and deception of consumers throughout the region and in Washington State for (i) trademark infringement under Sections 32, 34, and 35 of the Lanham Act, 15 U.S.C. §§1114, 1116 and 1117; and (ii) related claims arising under common law and Washington State law.

2. Wake Up makes coffee and related products that are sold throughout the western United States under the brand name WAKE UP CALL, which is registered in the United States with the U.S. Patent and Trademark Office, under Reg. No. 4,514,320. Wake Up has been using the WAKE UP CALL mark, and related marks, in connection with the sale of coffee and related products since July 2004.

3. Defendant is a craft brewing company based in Southeastern Idaho that makes beer and distributes its products throughout much of the United States, including, but not limited to, Idaho, Washington, and Montana. One of its craft beers is an imperial coffee porter, a type of beer made using hops and coffee beans, marketed under the name WAKE UP CALL. Wake Up seeks damages and injunctive relief to stop Defendant from marketing, distributing, and selling beer and/or related products or services associated with Wake Up's WAKE UP CALL marks. Because such wrongful conduct is causing irreparable harm to Wake up in the form of consumer confusion as to the source of Defendant's goods, it is creating a false association between Wake Up and Grand Teton.

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PARTIES

4. Plaintiff is a corporation existing under the laws of the State of Washington, with its principle place of business at 10102 E. Knox Ave., Suite 350, Spokane Valley, WA 99206.

5. Defendant is an Idaho corporation with its principle place of business at 430 Old Jackson Highway, Victor, ID 83455.

JURISDICTION & VENUE

6. This action arises under the Lanham Act, Title 15 of the U.S. Code, § 1051 et seq. Thus, jurisdiction over the parties and subject matter of this action is proper in this Court pursuant to 15 U.S.C. § 1121 (actions arising under the Lanham Act), 28 U.S.C. § 1331 (actions arising under the laws of the United States), and 28 U.S.C. § 1338 (actions arising under an Act of Congress relating to trademarks and copyrights). Alternatively the Court has jurisdiction pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds $75,000.

7. This Court has personal jurisdiction over Defendant pursuant to Washington's Long-Arm Statute RCW 4.28.

8. Defendant regularly transacts, conducts, and solicits business within Washington State and within this Judicial District. Defendant committed tortious acts within Washington State and within this Judicial District.

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9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c) because a substantial part of the acts, events, and omissions giving rise to Plaintiff's claims occurred in this Judicial District, and because the Defendant is subject to the Court's personal jurisdiction. Further, Defendant may own, use, or possess property in Washington State.

10. Defendant promotes, offers for sale, advertises, sells, and distributes, its infringing WAKE UP CALL coffee porter beer into Washington State and this Judicial District. Defendant's conduct caused, and will continue to cause, injury and damage to Plaintiff within Washington State and this Judicial District.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

11. Plaintiff Wake Up is one of the largest coffee makers and providers in eastern Washington, with multiple locations throughout the greater Spokane region, and a broad customer base that spans several states.

12. Wake Up first used the WAKE UP CALL mark in U.S. commerce in connection with the sale of coffee and related products since July 2004, and the mark has been in continuous use since that time.

13. Wake Up owns a U.S. federal trademark registration for the WAKE UP CALL mark, U.S. registration No. 4,514,320, issued April 15, 2014 in international classes 030, 035, and 043 for use in connection with "beverages made of coffee; coffee; coffee beans; ground coffee beans", "drive-through retail store

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services featuring coffee and related goods", and "coffee shops." A copy of the registration for the WAKE UP CALL mark is attached as **EXHIBIT A**.

14. Independent of the foregoing registration, Wake Up is the owner and holder of all common-law rights associated with the WAKE UP CALL mark.

15. The WAKE UP CALL mark has been used in commerce continuously in the United States by Wake Up prior to Defendant's use.

16. Wake Up has expended substantial time and effort, and tens of thousands of dollars to develop and protect the value of the WAKE UP CALL mark.

17. The WAKE UP CALL mark is distinctive and widely recognized by the public as a source identifier for Wake Up's coffee products and related services. Wake Up derives substantial goodwill and value from its exclusive use of the WAKE UP CALL mark in connection with coffee products and related services.

18. Defendant Grand Teton makes a variety of alcoholic beverages, primarily beer. Without the authorization or consent of Plaintiff Wake Up, Grand Teton markets its coffee porter line of beer under the WAKE UP CALL mark. Attached are images of Defendant's WAKE UP CALL product and product marketing materials, attached as **EXHIBIT B**.

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19. Counsel for Wake Up first reached out to the owner of Grand Teton via telephone on December 8, 2016 informing him that Grand Teton was infringing upon Wake Up's trademark rights, and providing him with a copy of the WAKE UP CALL trademark registration certificate. On December 12, counsel for Wake Up sent a follow up email to the owner of Grand Teton expressing Wake Up's desire to resolve the matter amicably and outlining potential options for a resolution. Grand Teton did not provide a response to that follow up email, so counsel for Wake Up submitted another follow up email on December 21, 2016 requesting an update.

20. On December 22, 2016, the owner of Grand Teton responded via email stating that he was discussing Wake Up's proposal with his attorney, and that he would submit a response to following week. On the same day, counsel for Wake Up informed Grand Teton that actual confusion had occurred in Spokane, Washington. Grand Teton never submitted a response.

21. On January 26, 2017, counsel for Wake Up submitted a formal cease and desist letter to Teton Brewing Company demanding that it cease its unauthorized use of the WAKE UP CALL trademark in connection with its products. This letter is attached as **EXHIBIT C**.

22. To date, Wake Up has not received any substantive response from Grand Teton.

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23. Grand Teton's unlawful use of a mark that is confusingly similar to Wake Up's WAKE UP CALL mark is likely to cause confusion in the minds of Wake Up's actual and potential consumers.

24. Given the fact that the two marks at issue are identical, and the fact that the goods are highly related, reasonable, and ordinary customers will mistakenly believe that Grand Teton's business and/or goods are sponsored, authorized or approved by Wake Up, or are otherwise associated with the company that sells WAKE UP CALL branded coffee.

25. Wake Up's remedy at law is inadequate to compensate it fully for its injuries. Unless enjoined, Defendant's actions will continue, causing irreparable damage to Wake Up. It would be extremely difficult or impossible to estimate the amount of compensation necessary to afford Wake Up complete monetary relief for continuing acts damaging Wake Up's intangible assets and goodwill. Multiple judicial proceedings would be required in the absence of appropriate injunctive relief.

26. Absent injunctive relief, the consuming public will continue to be harmed by the confusion caused by Defendant's advertising, sale, and distribution of its infringing products.

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COUNT I
FEDERAL TRADEMARK INFRINGEMENT
(15 U.S.C. §§ 1114)

27. Wake Up incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

28. Defendant's promotion, advertisement, distribution, use and/or continued sale of WAKE UP CALL branded products constitutes a wrongful use of and unauthorized reproduction, copy or colorable imitation of Wake Up's WAKE UP CALL trademark.

29. Defendant's promotion, advertisement, distribution, use and/or continued sale of WAKE UP CALL branded products caused and/or is likely to cause confusion, or to cause mistake, or to deceive.

30. Defendant's willful acts are intended to reap the benefit of Wake Up's reputation and goodwill that it has created in its WAKE UP CALL mark, and constitute infringement of the federally registered WAKE UP CALL trademark, in violation of sections 32, 34, and 35 of the Lanham Act (15 U.S.C. §§1114, 1116 and 1117).

31. As a direct and proximate result of Defendant's unlawful and willful activities, Wake Up has suffered and will continue to suffer damages in an amount presently unknown and to be ascertained at the time of trial, but in an amount in excess of the jurisdictional limits of this Court.

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32. Defendant's conduct has caused and will continue to cause immediate and irreparable injury to Wake Up, including its business, reputation and goodwill, and will continue to damage Wake Up and deceive the public unless enjoined by this court. Wake Up has no adequate remedy at law.

33. Defendant's infringement of the WAKE UP CALL mark is deliberate, willful, fraudulent and without any extenuating circumstances, and constitutes a knowing use of the WAKE UP CALL mark and an exceptional case within the meaning of the Lanham Act § 35 (15 U.S.C. § 1117). Wake Up is therefore entitled to recover three times the amount of its actual damages and the attorneys' fees and costs incurred in this action.

COUNT II
COMMON LAW TRADEMARK INFRINGEMENT

34. Wake Up incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

35. Defendant's acts alleged herein and specifically, without limitation, Defendant's use of the WAKE UP CALL mark, infringe Wake Up's exclusive trademark rights in the WAKE UP CALL mark, in violation of the common law.

36. As a direct consequence of Defendant's conduct, Wake Up has suffered and will continue to suffer damages, and the public will continue to be

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deceived, unless enjoined by this court. Wake Up has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity.

37. Wake Up has incurred damages in an amount to be proven at trial consisting of, among other things, diminution in the value of the goodwill associated with the WAKE UP CALL mark, directly attributable to Defendant's unauthorized and illegal activity.

COUNT III
COMMON LAW UNFAIR COMPETITION

38. Wake Up incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

39. Defendant has engaged in and continues to engage in unfair competition by using the WAKE UP CALL mark with the intention of interfering with and trading on the business reputation and goodwill engendered by Wake Up's efforts and financial investments. Defendant's unfair competition is accomplished by Defendant's passing off its goods as those of another, namely Wake Up.

40. Defendant's acts have caused Wake Up both competitive injury, as described herein, and damages in an amount to be proved at trial, consisting of diminution in the value and goodwill associated with the WAKE UP CALL mark.

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41. Wake Up has no adequate remedy at law in that the amount of its damages is difficult to ascertain with specificity. Defendant's acts will continue if not enjoined.

42. Wake Up has incurred damages in an amount to be proven at trial consisting of, among other things, diminution in the value of the goodwill associated with the WAKE UP CALL mark, directly attributable to Defendant's unauthorized and illegal activity.

COUNT IV
WASHINGTON CONSUMER PROTECTION ACT
(R.C.W.A. § 19.86.020 *et seq.*)

43. Wake Up incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

44. Defendant has engaged in and continues to engage in unfair and deceptive practices within the meaning of the Washington Consumer Protection Act, R.C.W.A. § 19.86.020 *et seq.*, by passing off its goods as those of Wake Up or approved by Wake Up and by Defendant's unauthorized trademark use and infringement.

45. Defendant's unlawful actions affect the public interest because by using the WAKE UP CALL mark on and in connection with the sale of its unauthorized products, Defendant caused and continues to cause a likelihood of

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confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective products.

46. Defendant's unlawful actions also affect the public interest by causing a likelihood of confusion or misunderstanding as to the affiliation, connection or association of Defendant with Wake Up.

47. Defendant's unlawful conduct relating to the WAKE UP CALL mark and related common law trademarks is causing and is likely to continue to cause substantial injury to the purchasing public and to Wake Up's business and property.

48. Defendant's unlawful conduct irreparably damaged Wake Up in its business and property and will continue to damage Wake Up unless restrained.

49. Wake Up is without an adequate remedy at law. Pursuant to RCW § 19.86.090, Wake Up is entitled to, among other things, an order temporarily and permanently enjoining and restraining Defendant from advertising, manufacturing, and/or selling its unauthorized WAKE UP CALL branded products.

50. Defendant's unlawful conduct has proximately caused Wake Up to suffer damages, and Wake Up is entitled to recover three times its actual damages, costs, and reasonable attorneys' fees pursuant to RCW § 19.86.090.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Wake Up prays for judgement and relief as follows:

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1. An order temporarily, preliminarily, and permanently enjoining and restraining Defendant, its offices, directors, servants, employees, attorneys, agents, representatives, and distributors, and all other persons acting in concert or participation with Defendant from:

a. Making, distributing, shipping, selling, displaying, delivering, advertising, and/or otherwise marketing Defendant's products bearing any trademark that is the same as, or confusingly similar to, any mark owned or used by Wake Up for coffee or related products or services;

b. Misrepresenting in any way the source of origin or the nature or quality of its WAKE UP CALL branded goods;

c. further conduct which infringers the WAKE UP CALL trademark;

2. Judgment in favor of Wake Up and against Defendant on all claims and for lost profits and lost revenues, additional damages, including exemplary and treble damages;

3. Award Wake Up attorneys' fees and costs of suit, consulting fees, expert witness fees, and other costs, fees and expenses incurred herein and such other amounts as may be proven at trial or as otherwise provided by federal or state law;

4. Award Wake Up pre-judgment and post-judgment interest; and

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5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 13th day of March, 2017.

By: s/ Rhett V. Barney

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